

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA, ex rel.</b>	)	
<b>W. A. DREW EDMONDSON, in his capacity as</b>	)	
<b>ATTORNEY GENERAL OF THE STATE OF</b>	)	
<b>OKLAHOMA, and OKLAHOMA SECRETARY</b>	)	
<b>OF THE ENVIRONMENT C. MILES TOLBERT,</b>	)	
<b>in his capacity as the TRUSTEE FOR NATURAL</b>	)	
<b>RESOURCES FOR THE STATE OF OKLAHOMA,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>05-CV-0329 TCK-SAJ</b>
	)	
<b>TYSON FOODS, INC., TYSON POULTRY, INC.,</b>	)	
<b>TYSON CHICKEN, INC., COBB-VANTRESS, INC.,</b>	)	
<b>AVIAGEN, INC., CAL-MAINE FOODS, INC.,</b>	)	
<b>CAL-MAINE FARMS, INC., CARGILL, INC.,</b>	)	
<b>CARGILL TURKEY PRODUCTION, LLC,</b>	)	
<b>GEORGE'S, INC., GEORGE'S FARMS, INC.,</b>	)	
<b>PETERSON FARMS, INC., SIMMONS FOODS, INC.,</b>	)	
<b>and WILLOW BROOK FOODS, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
<b>TYSON FOODS, INC., TYSON POULTRY, INC.,</b>	)	
<b>TYSON CHICKEN, INC., COBB-VANTRESS, INC.,</b>	)	
<b>GEORGE'S, INC., GEORGE'S FARMS, INC.,</b>	)	
<b>PETERSON FARMS, INC., SIMMONS FOODS, INC.,</b>	)	
<b>and WILLOW BROOK FOODS, INC.,</b>	)	
	)	
<b>Third Party Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>CITY OF TAHLEQUAH, <i>et al.</i>,</b>	)	
	)	
<b>Third Party Defendants.</b>	)	

**THIRD PARTY PLAINTIFFS' ANSWER TO  
COUNTERCLAIM OF THIRD PARTY DEFENDANT, CITY OF WATTS**

Defendants/Third Party Plaintiffs, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken Inc., Cobb-Vantress, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc. (collectively "Third Party Plaintiffs"), hereby submit their Answer to the Counterclaim of Third Party Defendant, City of Watts ("Third Party Defendant") [Docket # 204], and state as follows:

### **ADMISSIONS AND DENIALS**

1. As to Third Party Defendant's Paragraph 56 of its Counterclaim, Third Party Plaintiffs are without sufficient information or knowledge to either admit or deny the averments adopted and repleaded from Third Party Defendant's Answer and Affirmative Defenses and, therefore, deny the same. With regard to the remainder of Paragraph 56, Third Party Plaintiffs deny all remaining averments and allegations.

2. Third Party Plaintiffs deny the allegations contained in Paragraph 57 of Third Party Defendant's Counterclaim.

3. Third Party Plaintiffs deny the allegations contained in Paragraph 58 of Third Party Defendant's Counterclaim.

4. As to Third Party Defendant's Paragraph 59 of its Counterclaim, the documents attached as Exhibit "A" to the Counterclaim speak for themselves; however, to the extent that these documents contain averments and allegations in support of Third Party Defendant's Counterclaim that can be admitted or denied, Third Party Plaintiffs deny all such averments and allegations.

5. Third Party Plaintiffs deny the allegations contained in Paragraph 60 of Third Party Defendant's Counterclaim.

As to the Therefore Clause at the end of Third Party Defendant's Counterclaim, Third Party Plaintiffs deny that Third Party Defendant is entitled to any relief from them whatsoever including attorney fees and costs.

### **AFFIRMATIVE AND OTHER DEFENSES**

While continuing to deny the material averments of Third Party Defendant's Counterclaim, Third Party Plaintiffs set forth the following affirmative and other defenses to Third Party Defendant's Counterclaim pursuant to Federal Rules of Civil Procedure 8 and 12:

1. The Counterclaim fails to state a claim, in whole or in part, against Third Party Plaintiffs for which relief can be granted.
2. Third Party Defendant lacks standing to maintain an action for any actual or alleged injury to the waters or natural resources of the Illinois River.
3. While continuing to deny the material averments of the Counterclaim and Plaintiffs' First Amended Complaint, the Attorney General of the State of Oklahoma has claimed sole and complete dominion over the subject matter of Third Party Defendant's Counterclaim under the doctrine of *parens patriae* and otherwise, thereby further denying Third Party Defendant standing to maintain any of the claims contained in the Counterclaim.
4. While continuing to deny the material averments of the Counterclaim and Plaintiffs' First Amended Complaint, the Oklahoma Secretary of the Environment has claimed sole and complete dominion over the subject matter of Third Party Defendant's Counterclaim under the doctrine of *parens patriae* and otherwise, thereby further denying

Third Party Defendant standing to maintain any of the claims contained in the Counterclaim as they relate to the natural resources of the State of Oklahoma.

5. The injury alleged by Third Party Defendant was not caused by any act or omission of Third Party Plaintiffs or anyone under their control.

6. Third Party Defendant's counterclaims are barred by the applicable statute of limitations.

7. Third Party Defendant's counterclaims are barred by the doctrine of laches.

8. Third Party Defendant's counterclaims with regard to alleged injuries to the waters of the Illinois River are prohibited by OKLA. STAT. tit. 11, § 22-116.

9. Third Party Defendant's counterclaims are barred by the doctrine of unclean hands.

10. Third Party Defendant's counterclaims should be dismissed for failure to state a claim for which relief can be granted, because said claims invade the sovereignty of the State of Arkansas.

11. Third Party Defendant's counterclaims should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

12. Third Party Defendant's counterclaims should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Dormant Commerce Clause of the United States Constitution.

13. Third Party Defendant's counterclaims should be dismissed for failure to state a claim for which relief can be granted, because said claims are preempted by the federal Clean Water Act.

14. Third Party Defendant's counterclaims should be dismissed for failure to state a claim for which relief can be granted, because the land application of poultry litter within the Illinois River Watershed ("IRW") is specifically authorized by the statutes and regulations of Oklahoma and Arkansas.

15. Third Party Defendant's Counterclaim should be dismissed for failure to join one or more indispensable parties.

16. Third Party Defendant's counterclaims are barred to the extent they rely on the retroactive application of any statute, regulation or standard of conduct.

17. Third Party Defendant's counterclaims are barred to the extent they are predicated upon conditions located on private lands, within privately-owned waters, on federal lands or any condition located within Indian Country.

18. Third Party Defendant's counterclaims are barred under the doctrines of estoppel, waiver and consent by virtue of the State of Oklahoma's legislative enactments, which expressly authorize, allow and direct the manner in which poultry litter may be land applied within the IRW.

19. Third Party Defendant's counterclaims are barred under the doctrines of estoppel, waiver and consent by virtue of the State of Oklahoma's regulatory oversight of the land application of poultry litter in the IRW, coupled with the State of Oklahoma's failure to advise Third Party Plaintiffs or any independent poultry farmer with whom it

contracts that any of their conduct had, is or will result in any natural resource injury whatsoever.

20. The Counterclaim fails to state any facts to support any claim that any act or omission of Third Party Plaintiffs directly and proximately resulted in any injury for which Third Party Defendant can recover.

21. While continuing to deny the material allegations of the Counterclaim, Third Party Plaintiffs state that Third Party Defendant's counterclaims are barred, in whole or in part, by its own conduct that contributed to the injuries it claims.

22. Third Party Defendant's counterclaims are barred, in whole or in part, by its failure to mitigate its alleged damages.

23. Third Party Plaintiffs state that their conduct must be adjudged solely according to the standards set forth in the statutes and regulations of the states of Oklahoma and Arkansas that occupy the field by regulating the management of poultry litter within the IRW.

24. The damages of which Third Party Defendant complains, if any, are the result of acts or omissions of individuals or entities over which Third Party Plaintiffs have or had no control and for which Third Party Plaintiffs have no responsibility.

25. Third Party Plaintiffs state that they cannot be held liable for the land application of poultry litter by those third parties, who through a private transaction with poultry farmers, acquire poultry litter for their own use according to their own terms.

26. Third Party Plaintiffs hereby adopt and incorporate by reference any other statement of defense asserted by any Defendant in this action.

Third Party Plaintiffs specifically reserve the right to amend this Answer to include additional general or affirmative defenses and to assert additional counterclaims or cross-claims upon completion of discovery.

### **PRAYER FOR RELIEF**

Wherefore, Defendants/Third Party Plaintiffs, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc. pray for relief from the Court and that judgment be entered for them and against Third Party Defendant City of Watts, on Third Party Defendant's Counterclaim, and that Third Party Plaintiffs be awarded their costs and reasonable attorney fees against Third Party Defendant City of Watts and that the Court grant Third Party Plaintiffs any other relief as may be just and proper under the circumstances.

Respectfully submitted by and on behalf of:

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## CERTIFICATE OF SERVICE

I certify that on the 14th day of February 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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